

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

STEVEN RICHARD WELL,

Petitioner,

v.

MARK THOMPSON,

Respondent.

CASE NO. 3:23-cv-00165-JNW-TLF

ORDER FOR HEARING ON THE
NOTICE OF PARTIES'
STIPULATION OF VOLUNTARY
DISMISSAL WITHOUT PREJUDICE
(DKT. 28)

**Procedure for hearing on the parties' stipulation of dismissal without
prejudice.**

Petitioner asks the Court to accept a notice of voluntary dismissal of his federal habeas corpus petition, while he pursues litigation in state court to exhaust state remedies. Dkt. 28. This notice is based on Fed. R. Civ. P. 41 (a)(1)(A)(ii). Dkt. 28 at 1. Even though the respondent has filed a response to the petition, Dkt 19, the respondent has stipulated they would agree to the dismissal without prejudice under Fed. R. Civ. P. 41 (a)(1)(A)(ii). Dkt. 28, at 2.

1 Under 28 U.S.C. § 2244 (d)(1) there is a one-year limitation period that applies to
2 federal habeas corpus petitions. *See Patterson v. Stewart*, 251 F.3d 1243 (9th Cir.
3 2001). And, 28 U.S.C. § 2244 (a), (b), provides that the federal court is prohibited from
4 considering a successive petition unless one or more of the statutory exceptions apply.

5 The parties' stipulation includes a signed authorization from the petitioner. Dkt.
6 28 at 4-5. The parties have stipulated that currently the Court has not decided any issue
7 relating to successive petitions, or whether the 28 U.S.C. § 2244 (d)(1) one-year
8 limitation would bar this petition; but if another federal habeas corpus petition is filed by
9 petitioner, the respondent may in the future, ask a court to review these issues. Dkt. 28,
10 at 1-2.

11 On December 16, 2010, Snohomish County Superior Court entered a Findings of
12 Fact, Judgment of Acquittal by Reason of Insanity, and Order Committing Defendant to
13 Western State Hospital. *See* Dkt. 19 (Answer to Petitioner's 28 U.S.C. §2254 Habeas
14 Corpus Petition) at Exhibit 3. The Superior Court found that Mr. Well did commit acts
15 which would constitute murder in the second degree armed with a deadly weapon, and
16 further, at the time of the commission of the acts, Mr. Well was legally insane. *Id.* at 3.
17 Because the Court found that Mr. Well was a "substantial danger to other persons," and
18 did "present a substantial likelihood of committing criminal acts jeopardizing public
19 safety or security," the Court found that Mr. Well should not be placed in treatment that
20 is less restrictive than detention in a state mental hospital. *Id.* at 4. Consequently, the
21 Superior Court committed Mr. Well to Western State Hospital for "up to the maximum
22 possible sentence for the crime". *Id.*

1 Because petitioner originally filed this federal habeas corpus petition pro se, and
2 the Court later appointed counsel to represent him, the Court has determined that it is
3 necessary to conduct a hearing and confirm whether petitioner understands the
4 situation and has the ability to make a decision to enter into this stipulation of dismissal.

5 The Court therefore orders that the parties will appear for a hearing to be
6 scheduled by the Clerk of Court, and to be held by video conference. The petitioner will
7 be allowed to consult in person with counsel before and during the hearing. Petitioner
8 and his counsel will appear by videoconference for this hearing, under appropriate
9 security measures of Western State Hospital. Counsel for the respondent will also
10 appear by video conference. This will be a hearing conducted on the record, with the
11 Magistrate Judge located in the courtroom, presiding during the videoconference from
12 the federal court, and the courtroom will be open.

13 The Courtroom Deputy is directed to set the matter for hearing as soon as
14 possible; the parties shall meet and confer on or before March 14, 2024 to arrange the
15 logistics. The parties are directed to confirm the videoconferencing details with the
16 Courtroom Deputy on or before March 21, 2024. See Fed. R. Civ. P. 43; U.S. District
17 Court for the Western District of Washington Local Civil Rule (LCR) 77, allowing “the
18 court to conduct proceedings via electronic transmission in lieu of live court
19 proceedings”; and LCR 78, allowing video hearings and some variations if the presiding
20 judge consents.

21 Dated this 1st day of March, 2024.

22 

23 Theresa L. Fricke
24 United States Magistrate Judge